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**In the Supreme Court of the United States**

Argued Term 1940

**UNITED STATES OF AMERICA, PETITIONER**

**RAMON B. GONZALEZ and E. RAYMOND GONZALEZ, JR., Executors of the Estate of Edward F. Gonzalez, Deceased**

**Respondents**

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# INDEX

	Page
Opinion below.....	1
Jurisdiction.....	1
Question involved.....	2
Statutes involved.....	2
Statement.....	2
Specification of errors to be urged.....	5
Reasons for granting the writ.....	6
Conclusion.....	8
Appendix.....	9

## CITATIONS

### Cases:

<i>Boston Sand Co. v. United States</i> , 278 U. S. 41.....	6
<i>Cherokee Nation v. United States</i> , 270 U. S. 476.....	6
<i>District of Columbia v. Johnson</i> , 165 U. S. 330.....	6
<i>Goltra v. Davis</i> , 29 F. (2d) 257, certiorari denied, 279 U. S. 843.....	4
<i>Goltra v. Weeks</i> , 271 U. S. 536.....	4
<i>Higo v. United States</i> , 194 U. S. 315.....	7
<i>Hoee v. United States</i> , 218 U. S. 322.....	7
<i>Jacobs v. United States</i> , 290 U. S. 13.....	6, 7
<i>Seaboard Air Line Ry. v. United States</i> , 261 U. S. 299.....	6
<i>Squaw Island Freight Terminal Co. v. United States</i> , 89 C. Cls. 269.....	7, 8
<i>Tilson v. United States</i> , 100 U. S. 43.....	6
<i>United States v. Buffalo Pitts Co.</i> , 234 U. S. 228.....	7
<i>United States v. North Carolina</i> , 136 U. S. 211.....	6
<i>United States v. Verdier</i> , 164 U. S. 213.....	6
<i>Virginia-Eng. Co., Inc. v. United States</i> , 89 C. Cls. 457.....	8
<i>Yearsley v. Ross Construction Co.</i> , 309 U. S. 18.....	7

### Statutes:

Section 177, Judicial Code as amended (28 U. S. C. Sec. 284).....	10
Private Law No. 69, April 18, 1934, 73d Cong., 2d Sess. (c. 150, 48 Stat. 1322).....	4, 9

### Miscellaneous:

House Report 1426, 72d Cong., 1st Sess.....	7
House Report 828, 73d Cong., 2d Sess.....	7
Senate Report 362, 73d Cong., 2d Sess.....	7

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# In the Supreme Court of the United States

OCTOBER TERM, 1940

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

KATE B. GOLTRA AND E. FIELD GOLTRA, JR., EXECUTORS OF THE ESTATE OF EDWARD F. GOLTRA, DECEASED

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Claims in the above case. It is believed that the special jurisdictional Act, *infra*, p. 9, confers the right of appeal and an appeal has accordingly been taken. This petition is filed out of an abundance of caution.

## OPINION BELOW

The opinion of the Court of Claims is not yet officially reported.

## JURISDICTION

The judgment of the Court of Claims was entered April 1, 1940. The jurisdiction of this Court is



invoked under Section 3 (b) of the Act of February 13, 1925, as amended.

#### QUESTION INVOLVED

The Secretary of War seized vessels leased to the respondent; the court below found the seizure tortious and unauthorized. The question is whether interest can be allowed against the United States under a special statute conferring jurisdiction on the Court of Claims to "render judgment on the claims \* \* \* for just compensation".

#### STATUTES INVOLVED

The applicable portions of the statutes involved are set forth in the Appendix, *infra*, pp. 9-10.

#### STATEMENT

On May 28, 1919, a contract was entered into between the petitioner, represented by the Chief of Engineers, United States Army, and respondent,<sup>1</sup> providing for the lease to respondent, with an option to purchase, of certain barges and towboats which petitioner was constructing for use as carriers on the Mississippi River and its tributaries.<sup>2</sup>

<sup>1</sup> Upon the death of Edward F. Goltra on April 2, 1939, his executors, Kate B. Goltra and E. Field Goltra, Jr., were substituted as parties plaintiff (Fdg. 1). Respondent, when used herein, refers to Edward F. Goltra.

<sup>2</sup> A supplemental contract between the same parties providing for certain unloading facilities was entered into and made a part of the original contract on May 26, 1921 (Fdg. 6).

(Fdg. 6). Section 8 of the contract provided that the Chief of Engineers, as lessor, could terminate the contract at any time that in his judgment the respondent was guilty of a breach of the contract. After various negotiations concerning the rates to be charged by respondent (Fdgs. 8-14), nineteen barges and four towboats were delivered to respondent on July 15, 1922 (Fdg. 15). These vessels, owing to mechanical difficulties and low water, were operated by respondent on a very limited scale (Fdgs. 16, 17, 35).

About December 1, 1922, respondent, with the consent of the District Engineer, and in accordance with local custom, placed the barges and towboats in winter quarters at St. Louis, Missouri (Fdg. 18). During this lay-up period the respondent was informed that various commercial organizations interested in transportation on the Mississippi River had complained to the Secretary of War of the inactivity of this fleet, and was notified by the Secretary that a failure to operate at maximum capacity would be regarded as a violation of the contract (Fdg. 20). Subsequently, while the boats were still tied up, the Secretary of War, on March 3, 1923, notified respondent that because he had failed to comply with the terms of the contract, the contract was terminated (Fig. 23). Respondent, on being informed of the Secretary's action, refused to comply with his request to deliver the boats to the designated official (Fdg. 25). On March 25, 1923, pursuant to orders of the Acting



Secretary of War (Fdg. 29), the boats were seized from respondent and possession taken by the United States (Fdg. 28). On April 27, 1923, respondent was notified by the Chief of Engineers that in his judgment respondent had failed to comply with the terms of the contract and therefore he was terminating the contract; the letter was signed at the direction of the Secretary of War and did not represent the judgment of the Chief of Engineers (Fdg. 38).

Respondent brought suit against the Secretary of War, seeking to enjoin him from seizing the vessels. The suit was concluded by a judgment of this Court adverse to respondent (Fdg. 40),<sup>3</sup> based on the Ground that the Chief of Engineers, as lessor, representing the United States, had exercised his judgment, without fraud, in terminating the contract. *Goltra v. Weeks*, 271 U. S. 536.

This action was instituted in the Court of Claims on July 20, 1934, pursuant to Private Act No. 69, 73d Cong., 2d Session, *infra*, p. 9, conferring jurisdiction upon that court to hear, determine, and enter judgment upon the "claims of Edward F. Goltra against the United States for just compensation" for the taking of the vessels and unloading apparatus, whether taken "tortiously or not," without regard to the statute of limitations, or to any previous court decisions.

<sup>3</sup> An amended complaint instituted by respondent was dismissed. *Goltra v. Davis*, 29 F. (2d) 257 (C. C. A. 8th), certiorari denied, 279 U. S. 843 (Fdg. 41).

The court below found that the Chief of Engineers had not exercised his own judgment in cancelling the contract, but had been coerced into cancelling the contract subsequent to the actual seizure of the vessels. It accordingly held that the contract had not been terminated in accordance with its provisions, and that the seizure of the vessels was tortious. The court allowed \$350,000.00 as just compensation for the vessels, unloading apparatus, and all other claims. To this amount, however, it added interest at six percent per annum "not as interest but as a part of just compensation, from March 25, 1923, to the date of payment."

#### **SPECIFICATION OF ERRORS TO BE URGED**

The Court of Claims erred:

1. In holding that the Act of April 18, 1934, conferring jurisdiction upon it to entertain, hear, and render judgment on the claims of Goltra against the United States for just compensation for certain property taken, authorized it to award interest from the date of the alleged taking.

2. In holding that the use of the words "just compensation" in the Act called for the assessment of the same measure of damage as would apply to a taking of property by eminent domain.

3. In holding that the Act, in the absence of specific language expressly directing it so to do, authorized it to award interest.

4. In failing to hold that Section 177 of the Judicial Code precluded it from allowing interest on any claim against the United States prior to the time of the rendition of judgment.

5. In including in its judgment interest on the claim.

#### REASONS FOR GRANTING THE WRIT

1. The decision of the Court of Claims disregards settled principles. Section 177 of the Judicial Code prohibits the allowance of interest until the date of judgment unless the claim is founded on a contract expressly stipulating for the payment of interest. This Court has consistently held, under this section, that no interest may be recovered in a suit against the United States unless specifically authorized by Act of Congress or by contract. *Boston Sand Co. v. United States*, 278 U. S. 41; *Cherokee Nation v. United States*, 270 U. S. 476, 487; *District of Columbia v. Johnson*, 165 U. S. 330, 338; *United States v. Verdier*, 164 U. S. 213, 219; *United States v. North Carolina*, 136 U. S. 211; *Tilson v. United States*, 100 U. S. 43, 46.

Where property is taken by eminent domain, it is true that the just compensation required by the Fifth Amendment includes interest. *Jacobs v. United States*, 290 U. S. 13, 16, 17; *Seaboard Air Line Ry. v. United States*, 261 U. S. 299, 306. But the Fifth Amendment creates no obligation on the part of the Government where, as in this case, the taking is found to be the tortious and unauthorized

act of its officer. *Hooe v. United States*, 218 U. S. 322, 335, 336; *Jacobs v. United States*, 290 U. S. 13, 18; *Hijo v. United States*, 194 U. S. 315, 323; cf. *United States v. Buffalo Pitts Co.*, 234 U. S. 228, 233-235; *Yearsley v. Ross Construction Co.*, 309 U. S. 18, 20-22.

The words "just compensation" used in the jurisdictional Act would seem to be merely descriptive of "claims of Edward F. Goltra against the United States" and certainly are not words of art importing an obligation to pay interest when used as a measure of recovery for breach of contract or tort.<sup>4</sup>

2. The question presented is one of importance and should be decided by this Court in view of the uncertainty and confusion in the decisions of the Court of Claims. Within the past year the court below has on three occasions considered whether the use of the term "just compensation" in a special jurisdictional Act authorized the recovery of interest where the claims are founded on breach of contract or tort. Its decisions are in irreconcilable conflict. In *Squaw Island Freight Terminal Co. v. United States*, 89 C. Cls. 269, the Court of Claims held that a statute conferring jurisdiction to pass

<sup>4</sup>There is nothing in the legislative history of the Act here under consideration which indicates that it was the intent of Congress to confer authority upon the court below to award interest. The judiciary committees of both Houses concluded that the merits of Goltra's claims had never been passed upon, and stated that the sole purpose of the Act was to give him his "day in court." House Report 828, 73d Cong., 2d Sess.; Senate Report 362, 73d Cong., 2d Sess.; House Report 1426, 72d Cong., 1st Sess.

upon "the claim of [plaintiff] for just compensation" for loss of property caused by the negligence of Government officers did not authorize the allowance of interest, upon the ground (p. 278) that "There was no taking of plaintiff's property by the defendant for a public use within the meaning of the Fifth Amendment." In *Virginia Engineering Co., Inc. v. United States*, 89 C. Cls. 457, however, a statute authorizing the Court of Claims to determine the plaintiff's claim "and to award just compensation" for extra costs incurred at the request of a Government officer in the performance of a contract was held to require the allowance of interest. The court recognized that the plaintiff would only be entitled to the actual loss sustained in the absence of a special statutory provision but concluded (pp. 471-472) that the term "just compensation" had acquired a definite meaning entitling the claimant to the recovery of interest. And the Court of Claims now holds that statutory language identical with that employed in the *Squaw Island* case authorizes the allowance of interest from the date of the tortious seizure.

#### CONCLUSION

For the reasons above set forth, it is respectfully submitted that, if the appeal filed by the United States in this case should be dismissed, this petition for a writ of certiorari should be granted.

FRANCIS BIDDLE,  
Solicitor General.

JUNE 1940.



## APPENDIX

Private Law No. 69, of April 18, 1934, 73d Congress, 2d Sess. (48 Stat. 1322):

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That jurisdiction is hereby conferred upon the Court of Claims of the United States, whose duty it shall be, notwithstanding the lapse of time or the bar of any statute of limitations or previous court decisions, to hear, consider, and render judgment on the claims of Edward F. Goltra against the United States for just compensation to him for certain vessels and unloading apparatus taken, whether tortiously or not, on March 25, 1923, by the United States under orders of the Acting Secretary of War, for the use and benefit of the United States; and any other legal or equitable claims arising out of the transactions in connection therewith: *Provided*, That separate suits may be brought with respect to the vessels and the unloading apparatus, but no suit shall be brought after the expiration of one year from the effective date of this Act: *Provided further*, That either party may appeal as of right to the Supreme Court of the United States from any judgment in said case at any time within ninety days after the rendition thereof, and any judgment rendered in favor of the claimant shall be paid in the same manner as other judgments of said Court of Claims are paid.



Section 177, Judicial Code, as amended (28 U. S. C. Sec. 284):

(a) No interest shall be allowed in any claim up to the time of rendition of judgment by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest, except as provided in subsection (b). [Subsection (b) relates to tax cases exclusively.]

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